

# CONSCIENTIOUS OBJECTION IN THE HEALING PROFESSIONS:

## A READER'S GUIDE TO THE ETHICAL AND SOCIAL ISSUES

### Court Cases and Legal Analyses

Jere Odell, Rahul Abhyankar, Amber Malcolm, Avril Rua

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#### *Court Cases*

In addition to providing legal precedent, court cases may serve as stories for explaining and exploring how conscientious objection impacts the lives of patients, their families and clinicians. The list of cases that follows is not meant to be exhaustive bibliography of case law, but (rather) reflects those cases which have been discussed in secondary literature.

*Sebelius v. Hobby Lobby Stores, Inc.* 134 S. Ct. 678 (2013).<sup>1</sup>

Opinion of the court: pending. Argued before the U.S. Supreme Court on March 25, 2014,<sup>2</sup> this case addresses the issue of whether or not the Affordable Care Act<sup>3</sup> compels for-profit corporations to provide health coverage for contraception and other care that the corporation owners might consider objectionable. Also see: *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F. 3d. 1114 (10<sup>th</sup> Cir. 2013).<sup>4</sup> Discussed in Lynch; Mattingly; Meese & Oman; Nelson; Rienzi; Scharffs; Smith; Totenberg; Vanderbilt Law Review; Whelan.<sup>5-14</sup>

*Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir. 2009).<sup>15</sup>

Opinion of the Court: The state may not force pharmacies to dispense Plan B (and all FDA-approved drugs) as this is contrary to the First Amendment. Discussed in: Lynch; Mau.<sup>13, 14</sup>

*North Coast Women's Care Medical Group, Inc. v. Superior Court of San Diego County*. 44 Cal.4th 1145 (2008).<sup>18</sup>

Opinion of the court: Regarding a refusal to provide ART for a same-sex couple, the court held that clinicians do not have religious-based rights to discriminate based on a person's sexual orientation. Discussed in: Ajmani; Blake; Roshelli.<sup>19-21</sup>

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Vandersand v. Wal-Mart Stores, Inc., 525 F. Supp. 2d 1052 (C.D. Ill. 2007).<sup>22</sup>

Opinion of the Court: A conscientiously objecting pharmacist was unjustifiably fired by Wal-Mart. Wal-Mart claimed to be complying with a state law mandating the dispensation of Plan B. Discussed in Lynch.<sup>16</sup>

Catholic Charities of Diocese of Albany v. Serio, 7 N.Y.3d 510, 825 N.Y.S.2d 653, 859 N.E.2d 459 (2006).<sup>23</sup>

Opinion of the Court: An insurance company must cover Plan B despite religious objection (precedent used: Employment Division vs. Smith). Discussed in Lynch; Marx; Tozzi.<sup>16,24,25</sup>

Shelton v. Univ. of Med. & Dentistry, 223 F.3d 220 (3d Cir. 2000).<sup>26</sup>

Opinion of the Court: A nurse who wished to stay in the OBGYN ward must assist in induced abortions against her conscientious objection. The state hospital reasonably accommodated her religious beliefs and did not treat her any differently than any other nurse who refused to perform. Discussed in Lynch.<sup>16</sup>

Gray v. Romeo, 697 F. Supp. 580 (D.R.I. 1988).<sup>27</sup>

Opinion of the Court: A conscientiously objecting hospital must accede to a patient's end-of-life wishes if the patient cannot be promptly transferred. The onus is on the hospital and not any individual health professional. Discussed in Lynch.<sup>16</sup>

Matter of Jobes, 529 A. 2d 434 (1987).<sup>28</sup>

Opinion of the Court: Hospital must comply with patient's end-of-life wishes despite the wish's incompatibility with the institution's conscience precisely because the institution failed to make its policies known from the outset of a patient's care. Discussed in Lynch.<sup>16</sup>

Brophy v. New England Sinai Hospital, Inc., 398 Mass. 417, 497 N.E.2d 626 (1986).<sup>29</sup>

Opinion of the Court: Hospital does not have to remove feeding tube against its conscience though it must transfer the patient. Discussed in Lynch.<sup>(16)</sup>

In re Requena, 213 N.J. Super. 475, 517 A.2d 886 (1986).<sup>30</sup>

Opinion of the Court: A pro-life hospital must treat a patient who does not wish to be transferred due to the burden the patient would suffer. The hospital (not any individual health professional) must take responsibility in service to the patient. Discussed in Lynch.<sup>(16)</sup>

Swanson v. St. John's Lutheran Hospital, 182 Mont. 414, 597 P.2d 702 (1979).<sup>31</sup>

Opinion of the Court: A nurse-anesthetist was unjustifiably fired by the hospital. She is protected by a conscience clause. Discussed in Lynch.<sup>(16)</sup>

In re Summers, 325 U.S. 561, 65 S.Ct. 1307 (1945).<sup>32</sup>

Opinion of the Court: Court is less sympathetic to religious freedom claims made by those engaged in voluntary commercial activities such as the practice of law in which state law says lawyers may be forced into military service. Discussed in Lynch.<sup>16</sup>

### ***Legal Analyses***

Articles in law reviews often address the concept of conscientious objection from hypothetical and constitutional perspectives. Authors may test the strength of current law and policy or may propose approaches to future conscientious objection policy and legislation. The bibliography that follows lists legal literature that is freely available online. (For a short timeline of legislation relevant to conscientious objection in the health professions, see: “A short overview,” available from: <http://hdl.handle.net/1805/3845>.)<sup>33</sup>

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